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No. _____

**In the Supreme Court of the United States**

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES (FORMERLY MICHIGAN DEPARTMENT OF COMMERCE) AND ITS DIRECTOR; MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, JOHN C. SHEA AND DAVID A. SVANDA; AND THOMAS LONERGAN,

*Petitioners,*

v.

SCHNEIDER NATIONAL CARRIERS, INC.; SCHNEIDER TRANSPORT, INC.; SCHNEIDER NATIONAL BULK CARRIERS, INC.; SCHNEIDER TANK LINES, INC.; and SCHNEIDER SPECIALIZED CARRIERS, INC.,

*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

# PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

Under the Single State Registration System, 49 USC 14504(c)(2)(B)(iv)(III), a State is authorized to charge a fee "that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." In September, 1991, the Petitioners State of Michigan, *et al* mailed renewal registration forms to the Respondent charging $10 per vehicle for the 1992 registration year. In October, 1991, the Petitioners collected those registration fees. The question presented is whether such fees were "collected or charged as of November 15, 1991" in accordance with 49 USC 14504(c)(2)(B)(iv)(III).

## PARTIES TO THE PROCEEDING

Petitioners are the State of Michigan, Michigan Department of Treasury and its State Treasurer, Michigan Department of Consumer and Industry Services (formerly Michigan Department of Commerce) and its Director, Michigan Public Service and its Commissioners, John G. Strand, John G. Shea and David A. Svanda, and Thomas Lonergan.

Respondents are Schneider National Carriers, Inc., Schneider Transport, Inc., Schneider National Bulk Carriers, Inc., Schneider Tank Lines, Inc, and Schneider Specialized Carriers, Inc.

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## OPINIONS BELOW

The August 5, 2003 opinion of the Michigan Court of Appeals is unreported. (Pet. App. 3a-5a.) The April 9, 2004 order of the Michigan Supreme Court denying review is reported at 469 Mich 1026; 677 NW2d 331 (2004). (Pet. App. 1a-2a.)

## JURISDICTION

The Michigan Supreme Court issued an order on April 9, 2004 denying the State's Application for Leave to Appeal the August 5, 2003 Opinion of the Michigan Court of Appeals. This Petition for Certiorari is being filed within 90 days of the April 9, 2004 Order. The jurisdiction of this Court is invoked under 28 USC 1257(a).

## CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The pertinent statutory provisions are reproduced in the Appendix. The statutes involved are 49 USC 11506 (Pet. App. 35a-37a) (since recodified as 49 USC 14504) and Mich Compiled Laws (MCL) 478.7(4). (Pet. App. 38a). The Constitutional provision involved is the Commerce Clause, US Const, Art I, § 8, Clause 3.

## STATEMENT

### A. Introduction.

In *Yellow Transportation, Inc v Michigan*, 537 US 36 (2002). In *Yellow Transportation*, this Court held that it was unlawful for a state to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system. This Court's decision in *Yellow Transportation* left unresolved the issue of whether Congress in 49 USC 14504(c)(2)(B)(iv)(III) intended to cut off a state's right to continue charging and collecting interstate motor vehicle registration fees, authorized by state law, that were charged or collected under a fee system in place as of a November 15, 1991 federal statutory deadline, but related to the 1992 annual registration period.

Despite the fact that the Petitioners had complied with the plain language of 49 USC 14504(c)(2)(B)(iv)(III) by charging and collecting registration fees from Respondent prior to the November 15, 1991 deadline, the Michigan Court of Appeals, on second remand, held that the Petitioners had not complied with the federal statute. *Schneider National Carriers, Inc, et al, v State of Michigan (on second remand)*, Case No. 208346 (August 5, 2003) (unpublished), (Pet. App. 3a-5a). The Michigan Supreme Court denied review, 469 Mich 1026; 677 NW2d 331 (2004). (Pet. App. 1a-2a.)

### B. History of Proceedings.

Schneider National Carriers, Inc.; Schneider Transport, Inc.; Schneider National Bulk Carriers, Inc.; Schneider Tank Lines, Inc. and; Schneider Specialized Carriers, Inc. (collectively, Schneider) are for-hire trucking companies doing business in the State of Michigan. On October 22, 1996, Schneider brought suit in the Michigan Court of Claims requesting a refund of fees it paid to the Petitioners State of Michigan, Michigan Department of Treasury and its State Treasurer, Michigan Department of Consumer and Industry Services (formally Michigan Department

of Commerce) and its Director; Michigan Public Service Commission and its Commissioners, John G. Strand, John C. Shea and David A. Svanda; and Thomas Lonergan (collectively, Petitioners) under the Single State Registration System (SSRS). 49 USC 11506 *et seq*, recodified at 49 USC 14504. Under the SSRS, states may assess interstate motor carriers a fee of no more than $10 per vehicle, not to exceed the amount that the state collected or charged as of November 15, 1991. To promote efficiency, the SSRS requires each motor carrier to pay all its fees through its home state which then collects and remits fees charged by other states. In 1991, the MPSC determined that reciprocity was to be based on the principal place of business of the motor carrier rather than the state in which the vehicle was base-plated.

For the registration year 1991, Schneider's vehicles were base-plated in Illinois. For that registration year, the MPSC did not charge a per vehicle fee for Schneider's vehicles, due to a reciprocity agreement it had with Illinois. However, beginning September, 1991 for the 1992 registration year and for registration years thereafter, the MPSC charged Schneider the $10 fee since Schneider's principal place of business is Wisconsin, a state which never shared reciprocity with Michigan. Schneider, in the Court of Claims, sought a refund for all fees paid for the years 1994-1997. Michigan denied all claims with the exception of the overpayment made for 1996. Both Schneider and Petitioners filed Motions for Summary Disposition. In an Opinion and Order dated November 24, 1997, the Michigan Court of Claims granted summary disposition in favor of Petitioners. (Pet. App. 11a-22a.)

After the Court of Claims decision, the Michigan Court of Appeals decided *Yellow Freight System, Inc v Michigan,* 231 Mich App 194; 585 NW2d 762 (1998), involving the same issue. In *Yellow Freight, supra,* another panel of the Michigan Court of Appeals held that Michigan had unlawfully collected motor carrier fees from Yellow Freight. Yellow Freight had paid more in fees to Michigan in 1992 than in 1991 due to the MPSC's change in determining reciprocity based on the carrier's principal

place of business as opposed to where the vehicle was base-plated. The Michigan Court of Appeals in *Yellow Freight* determined that a refund of fees was required, finding that the MPSC could not alter its reciprocity agreements. Given that resolution, the Court of Appeals, in an unpublished *per curiam* opinion, dated May 14, 1999, reversed the Court of Claims and found that Schneider was entitled to a refund for the monies in question. (Pet. App. 8a-11a.) The Petitioners then sought review by the Michigan Supreme Court, which ordered that the matter be held in abeyance pending its decision in *Yellow Freight.*

On May 15, 2001, the Michigan Supreme Court issued its decision in *Yellow Freight System, Inc v State of Michigan*, 464 Mich 21; 627 NW2d 236 (2001), reversing the Court of Appeals decision at 231 Mich App 194; 585 NW2d 762 (1998), upon which the Court of Appeals had relied. The Michigan Supreme Court held that, based on the plain language of 49 USC 14504, reciprocity agreements were not relevant in determining what fees were charged as of November 15, 1991. Additionally, the Michigan Supreme Court held that, as of November 15, 1991, the fee charged or collected pursuant to Michigan law was $10. Accordingly, the Court held Yellow Freight was not entitled to the refund it requested. The Michigan Supreme Court vacated the Court of Appeals' May 14, 1999 decision and remanded the case to the Court of Appeals for reconsideration in light of *Yellow Freight System, Inc, supra*. Thereafter on October 19, 2001, the Court of Appeals issued its opinion in *Schneider National Carriers, Inc v State of Michigan*, 247 Mich App 216; 637 NW2d 838 (2001), affirming the Court of Claims on those issues raised by Schneider.

Meanwhile, Yellow Freight and Schneider filed petitions for writ of certiorari which were granted by this Court. This Court then in its November 5, 2002 Opinion in *Yellow Transportation*, reversed the Michigan Supreme Court's holding that the state must look not at the fees paid by Petitioner in a given year, but at the generic fee Michigan charged carriers as of November 15, 1991. Instead this Court held that:

> ISTEA's fee-cap provision does not foreclose the ICC's determination that fees charged under States' pre-existing reciprocity agreements were, in effect, frozen by the new Single State Registration System. The provision requires that the new system "result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U. S. C. §14504(c)(2)(B)(iv)(III). The language "collected or charged" can quite naturally be read to mean fees that a State *actually* collected or charged. The statute thus can easily be read as the ICC chose, making it unlawful "for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system." [537 US 45-46.]

This Court, however, specifically noted in *Yellow Transportation* that the Michigan Supreme Court had not previously considered Petitioner's argument that the fees Yellow Transportation paid to Michigan for the 1992 registration year were collected as charged as of November 15, 1991. 49 USC 14504(c)(2)(B)(iv)(III).

Following this Court's decision in *Yellow Transportation*, the Michigan Supreme Court remanded this proceeding to the Michigan Court of Appeals, specifically directing that Court to address the issue of "whether § 4005 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (supp. V 1999)] allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992." (Pet. App. 6a-7a.)

On remand, the Michigan Court of Appeals held that the other Court of Appeals panel's decision in *Yellow Transportation, Inc v State of Michigan (on remand)*, 257 Mich App 602, 613; 669 NW2d 553 (2003), was controlling and resolved the dispositive

issues in Respondents favor. *Schneider National Carriers, Inc. v State of Michigan (on second remand),* Case No. 208346 (August 5, 2003) (unpublished). (Pet. App. 3a-5a.) The Court of Appeals in *Schneider* thus adopted the other panel's decision in *Yellow Tranportation* and held that despite the fact that the fees from Schneider were actually charged and collected by the Petitioners prior to the federally mandated deadline of November 15, 1991 the Petitioners had not complied with the federal statute. The Petitioners then sought review by the Michigan Supreme Court which was denied. 469 Mich 1026; 677 NW2d 331 (2004). (Pet. App. 1a-2a.)

**C. The federal Single State Registration System.**

The resolution of the issue for which review is now sought is controlled by the language of the Single State Registration System (SSRS) that is set forth in 49 USC 14504.[1] To review this issue, it is necessary to understand the history of state regulation of motor carriers in the context of federal regulation.

Congress enacted the Motor Carrier Act of 1935, 49 USC 301 *et seq,* to provide for limited state regulation of interstate commercial transportation. Through various amendments, States were authorized to register interstate motor carriers, subject to supervision of the Interstate Commerce Commission (ICC). Under this registration program, which began in 1965, States choosing to participate were allowed to charge up to $10 for each vehicle registered. As proof of registration each state issued a stamp for each vehicle and these stamps were placed in the appropriate state spot on "bingo cards" carried in the cab of each vehicle.[2]

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[1] The SSRS was originally enacted into law in Section 4005 of the Intermodel Surface Transportation Efficiency Act of 1991. Pub L 102-240, 105 Stat 2146-2148, December 18, 1991 and codified as 49 USC 11506. The SSRS was subsequently re-enacted into law in Title I, § 103 of the ICC Termination Act of 1995, Pub L 104-88, 109 Stat 90 and recodified as 49 USC 14504.

[2] Motor carrier vehicles may carry any number of different cab cards in the cab of each vehicle. Examples include cab cards for the International Registration Plan (IRP), the International Fuel Tax Agreement (IFTA), the "bingo stamp"

In Michigan, although the Michigan Public Service Commission (MPSC) had reciprocity agreements with several states and provinces pertaining to fees for motor carriers in interstate commerce, it did not issue bingo card stamps to interstate, foreign and exempt interstate motor carriers until the Michigan Legislature enacted 1988 PA 347 (Act 347), an amendment to the Michigan Motor Carrier Act, 1933 PA 254, MCL 475.1 *et seq.* Act 347, which became effective January 1, 1989, authorized the MPSC to begin charging regulatory fees[3] for each vehicle of interstate motor carriers. See, MCL 478.7(4) . Additionally, under Act 347, the MPSC was permitted to enter into reciprocity agreements with other states that did not charge vehicles licensed in this state. Thus, beginning in the fall of 1989, the MPSC began issuing bingo card stamps for the registration year beginning 1990.

As of 1991, 38 States, including Michigan, participated in this registration system. Some, but not all, States entered into reciprocal arrangements under which they would discount or waive the fee for carriers based in each other's state. Most States used the motor carrier's principal place of business as the basis for determining reciprocity. Michigan, however, used the State in which the vehicle was base-plated, i.e. where it was registered or license plated, as the basis for determining reciprocity. Under this approach, for registration years 1990 and 1991, Michigan did not charge a fee for vehicles base-plated in a State that did not charge a fee for vehicles that were base-plated in Michigan.

Early in 1991, however, the MPSC determined that granting reciprocity using base-plating, rather than on place of business,

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card for vehicles that operate interstate, and cab cards for each state in which a vehicle may operate intrastate.

[3] As originally enacted, 1988 PA 347 provided that the MPSC was required to charge an annual fee equal to the charge levied on Michigan-licensed motor carrier vehicles in the other state. In 1989, the Michigan Legislature enacted 1989 PA 221 which amended this section by changing the annual registration fee on each vehicle to $10.00.

was unduly complex, inefficient to administer, and inconsistent with the registration system used by virtually all other states. See Affidavit of Thomas R. Lonergan (Pet. App. 23a). For example, vehicles operated by a single motor carrier but base-plated in several different States required several different calculations. *Id.* This significantly increased the possibility of error in reciprocity waivers. *Id.* Further, it became apparent to Michigan that it was one of a very few number of States using this system as opposed to the principal place of business as the basis for affording reciprocity.[4]

Contemporaneous with Michigan's determination that its reciprocity approach was difficult to administer and inconsistent with the approach of other States, Congress was considering legislation to streamline the state registration system. Recognizing that such legislation could include a mandatory uniform approach by participating states, the MPSC decided to terminate its use of base-plating as the method of determining reciprocity in favor of the "place of business" method of determining reciprocity to be consistent with other states. (Pet. App. 23a). Thus, early in 1991, Michigan brought its registration program in line with other state programs by adopting a revised reciprocity system based on the motor carrier's principal place of business. However, rather than implement this change mid-year, the MPSC decided, for the convenience of the industry, it would implement the change in the fall when the annual renewals occurred.

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was enacted into law. Pub L 102-240, 105 Stat 1914-2207. Included within ISTEA was Section 4005, "Single State Registration System," 105 Stat 2146-2148. 49 USC 14504(c). The SSRS created a streamlined system for the registration of a motor carrier's vehicles engaged in interstate commerce. Previously, motor

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[4] Other states that had used base-plating included Oklahoma, North Carolina and Indiana. All the foregoing states participate in the SSRS and now use principal place of business for determining reciprocity.

carriers were required to separately register their vehicles in each state that the vehicles operated in. The SSRS implemented a single state filing concept where a motor carrier would only file in and submit payment to the state in which it was based. That single filing and payment would cover vehicle registrations and fees for all states where the motor carrier operated vehicles. The state in which the motor carrier is based then sends the registrations and fees to all other states where such vehicles are operated.

Congress provided that the SSRS was to take effect by January 1, 1994. 105 Stat 2148.[5] It further provided that the ICC was to prescribe standards for the SSRS. With respect to the fee system under the SSRS, Congress provided, as follows at 49 USC 14504(c)(2)(B)(iv)(III):

> (B) Receipts; fee system. Such amended standards—
>
> (iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) **will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.** [49 USC 14504(c)(2)(B)(iv)(III); emphasis added.]

In September 1991, two months before the 45 USC 14504(c)(2)(B)(iv)(III) cut-off date of November 15, 1991, Michigan sent out renewal interstate cab (i.e. bingo) card stamp application forms to motor carriers for the 1992 registration year.

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[5] The effective date of the SSRS was set forth in Section 4005 of ISTEA and codified as 49 USC 11506(c)(3) and may be found at 105 Stat 2148. Subsection (c)(3) of 49 USC 11506 was not included in the subsequent recodification that occurred in 1995 when 49 USC 11506 became 49 USC 14504.

On the back of the application form were instructions which stated that "[t]he cab card stamp fees are based on the state or province shown on the ICC certificate or permit as the carriers base of operations." The amount of fees appropriate to a motor carrier's fleet was determined by reference to an accompanying chart identifying cab card stamp fees.

Other than the implementation of Michigan's revised reciprocity system to conform with most other state programs, no changes were made to Michigan's registration fee collection program. Thus, no change was made to Michigan's registration fee of $10.00 per vehicle, as authorized by MCL 478.7(4). Nor were there any change to Michigan's long standing practice of collecting renewal fees in the fall for registration in the upcoming year, as is the practice with most, if not all, other States.[6] As a result of the change for determining reciprocity, some carriers, such as Schneider that previously qualified for reciprocal fee discounts and fee waivers under the base-plating method for determining reciprocity were no longer afforded reciprocity, while others became eligible for reciprocity based on their place of business.

**D. Michigan fees charged to and collected from Schneider.**

For the registration year 1991, Schneider's vehicles were base-plated in Illinois. Under the base-plating method of determining reciprocity that Michigan had in effect at that time, Schneider was not charged for those bingo card stamps as those states did not charge fees for vehicles based-plated in Michigan. See Affidavit of Thomas R. Lonergan (Pet. App. 23a). Schneider, however, was charged for vehicles that were base-plated in Illinois. *Id.*

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[6] In fact, the single state registration system (SSRS) requires motor carriers to register in the fall preceding the registration year. The SSRS procedures manual states that registrants must file an application for registration and pay fees no earlier than August 1 and no later than November 30 of each year for the upcoming year.

After Michigan changed its method for determining reciprocity based on a company's principal place of business, Schneider was charged a $10.00 per vehicle registration fee for all its vehicles, as its principal place of business was in Wisconsin, and Michigan had no reciprocity with the State of Wisconsin. *Id.*

The application form for the 1992 calendar year reflecting the $10 per vehicle registration fee was mailed to Schneider in September 1991. Since September 1991 Michigan has annually charged and Schneider paid a registration fee of $10.00 per vehicle for each vehicle operated in Michigan inasmuch as Schneider's principal place of business remains in Wisconsin and Michigan has no reciprocity with that state.

## REASONS FOR GRANTING THE PETITION

**A. The issue of whether the Petitioners had complied with 49 USC 11504(c)(2)(B)(iv)(III) by actually charging and collecting registration fees from Respondents prior to the federally mandated deadline of November 15, 1991, is now properly before this Court in accordance with this Court's decision in *Yellow Transportation, Inc v Michigan*, 537 US 36 (2002).**

In its decision in *Yellow Transportation, supra*, this Court limited its holding to the single issue of whether the Michigan Supreme Court had erred in determining that only Michigan's ten-dollar "generic" fee was relevant in determining what fee a state "collected or charged" as of November 15, 1991. *Yellow Freight Systems*, 464 Mich at 31. This Court held:

> The ICC's rule does not necessarily cap the aggregate fee paid by any particular carrier; rather, it simply requires States to preserve fees at the levels they actually collected or charged pursuant to reciprocity agreements in place as of November 15, 1991. [537 US at 48.]

The resolution of this precise question by this Court left unresolved a number of issues that had not been addressed by the Michigan Supreme Court. This Court observed:

> The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had "canceled its reciprocity agreements with other States in 1989." Brief for the United States as *Amicus Curiae* 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991. [537 US at 44.]

This observation mirrors that of the United States Solicitor General in the *amicus* brief filed on behalf of the United States:[7]

Following the Court's decision in *Yellow Transportation* the Michigan Supreme Court remanded this case to the Michigan Court of Appeals to reconsider preserved arguments of the parties not previously addressed by either supreme court, as follows:

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[7] In its *amicus* brief, the United States Solicitor General observed:

> In particular, the Michigan Supreme Court has not addressed the question of whether ISTEA allows Michigan to set its registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. See Pet. App. 28a. (Michigan Court of Appeals holding that registration "fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991"). That question implicates not only the ICC's decision (see Pet. App. 26a-29a), but also issues about Michigan's ability to modify the base-plate reciprocity policy it followed until 1991 and to adopt a place-of-business reciprocity rule that better fits the Single State Registration System. Those issues should be addressed by the Michigan Supreme Court on remand.

By order of June 24, 2002, the application for leave to appeal from the October 19, 2001 decision of the Court of Appeals was held in abeyance pending the decision of the United States Supreme Court in *Yellow Transportation, Inc v Michigan*, (US Docket No. 01-270). On order of the Court, the decision having been issued by the United State Supreme Court on November 5, 2002, *Yellow Transportation, Inc v Michigan,* 537 U.S. 36; 123 S. Ct. 371; 154 L. Ed. 2d 377 (2002), the application is again considered, and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we VACATE the Court of Appeals decision and we REMAND this case to that court for the reconsideration in light of the United States Supreme Court's decision. On remand the Court of Appeals is also DIRECTED to reconsider preserved arguments of the parties not directly addressed by this Court or the United States Supreme Court, including whether § 4005 of the Intermodal Surface Transportation Authority Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999)], allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. The parties are further DIRECTED to address the impact, if any, on this matter of representations made by the Solicitor General, in the *Amicus Curiae* Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation, Inc, supra,* about proceedings before the United States Federal Highway Administration involving defendants State of Michigan and Michigan Public Service Commission and about the informality of Michigan's reciprocity policies. [*Schneider National Carriers, Inc v State of Michigan,* 468 Mich 862; 659 NW2d 228 (2003).] [Pet. App. 6a-7a.]

The Michigan Court of Appeals on its second remand simply held that the July 22, 2003 opinion by the Michigan Court of

Appeals in *Yellow Transportation, supra,* 257 Mich App at 610-616 was controlling and dispositive of the issues in Respondents' favor. The Michigan Court of Appeals' analysis is erroneous for the reasons fully discussed in Arguments B-D *infra.*

**B. The plain and unambiguous language of 49 USC 14504(c)(2)(B)(iv)(III) provides that a State may continue to charge a registration fee that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.**

On December 18, 1991, the federal Single State Registration System was signed into law. The SSRS provides in relevant part as follows:

> (c) Single State registration system.
>
> (1) In general. Not later than 18 months after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 [enacted Dec. 18, 1991], the Commission shall prescribe amendments to the standards existing as of such date of enactment. Such amendments shall implement a system under which --
>
> (A) a motor carrier is required to register annually with only one State;
>
> (B) the State of registration shall fully comply with standards prescribed under this section; and
>
> (C) such single State registration shall be deemed to satisfy the registration requirements of all other States.
>
> (2) Specific requirements.
>
> (A) Evidence of certificate; proof of insurance; payment of fees. Under the amended standards, implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier

holding a certificate or permit issued under this subtitle [49 USC §§ 10101 *et seq.*]--

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. Such amended standards--

* * *

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) **will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991**. [49 USC 14504(c). (Emphasis added.)]

The critical language is contained in 49 USC 14504(c)(2)(B)(iv)(III) of the SSRS that establishes a fee system that "will result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of November 15, 1991." Thus, if a state either charged *or* collected a fee as of November 15, 1991, it could continue to do so under the SSRS which took effect in 1994.

**C. In accordance with Michigan Compiled Law 478.7(4) the Petitioners charged a $10 per vehicle fee from Respondents prior to the federally mandated deadline of November 15, 1991.**

Michigan collects annual registration fees for motor carriers engaged in interstate transportation pursuant to MCL 478.7(4) that provides:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10 00. The [Michigan Public Service] commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

Up until 1991, the MPSC waived the $10.00 registration fee of vehicles base-plated in other states that waived the fee for vehicles base-plated in Michigan. Early in 1991, however, the MPSC's methodology for determining waiver was changed to be consistent with the other states, i.e. reciprocity was to be based on the principal place of business of a carrier. Renewal applications reflecting the principal place of business reciprocity methodology were mailed to all interstate motor carriers in September 1991. Among the motor carriers receiving renewal applications was Respondent Schneider. Thus, Petitioners charged Respondents a $10 per vehicle fee prior to the federally mandated deadline of November 15, 1991.

**D. The Michigan Court of Appeals erred when it held that the Petitioners had unlawfully charged the Respondents $10 per vehicle fee under 49 USC 14504(c)(2)(B)(iv)(III) even though the Petitioners had complied with the plain and unambiguous language of that statute when they charged such a fee prior to the federally mandated deadline of November 15, 1991.**

The question in this case, not previously addressed by this Court, is whether the State collected *or* charged the $10.00 fee, authorized by MCL 478.7(4), as of November 15, 1991. If the State either charged or collected the $10.00 fee as of November 15, 1991, then 49 USC 14504(c)(2)(B)(iv)(III) authorizes it to continue to charge and collect that fee under the SSRS. The State had been collecting and charging a $10 fee as provided for by MCL 478.7(4) since October 1, 1989. Moreover, the State actually charged the $10 fee to Schneider prior to the November 15, 1991 deadline.

The primary purpose of statutory interpretation is to ascertain and effectuate legislative intent. *Chevron U. S. A. Inc v Natural Resources Defense Council, Inc, et al,* 467 US 837 (1984). In *Timex V.I., Inc v United States, et al,* 157 F3d 879, 881-882 (CA Fed Cir, 1998), the Court observed:

> We do not fulfill our duty to say what the law is, see *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803), by merely agreeing to Commerce's interpretation of the statutory provision at issue if it is "reasonable," regardless of whether we think it correct. Rather, before granting an agency's statutory interpretation such great deference (commonly referred to as "Chevron" deference), we must first carefully investigate the matter to determine whether Congress's purpose and intent on the question at issue is judicially ascertainable. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 & n.9, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984). Only if, after this investigation, we conclude that Congress either

> had no intent on the matter, or that Congress's purpose and intent regarding the matter is ultimately unclear, do we reach the issue of Chevron deference. See id.; cf. *Muwwakkil v. Office of Personnel Management*, 18 F.3d 921, 925 (Fed. Cir. 1994) ("When an agency's interpretation of a statute . . . is contrary to the intent of Congress, as divined from the statute and its legislative history, we owe it no deference."). Indeed, if we hastily "throw up our hands" and declare that Congress's intent is unclear, we abdicate our duty; in essence, we leave statutory construction to an Article II agency, rather than accept the responsibility the Constitution imposes on Article III courts. See *Marbury*, 5 U.S. (1 Cranch) 137 at 177, 2 L. Ed. 60.
>
> To ascertain whether Congress had an intention on the precise question at issue, we employ the "traditional tools of statutory construction." *Chevron*, 467 U.S. at 843 n.9. The first and foremost "tool" to be used is the statute's text, giving it its plain meaning. See *VE Holding Corp. v Johnson Gas Appliance Co.*, 917 F.2d 1574, 1579 (Fed. Cir. 1990). Because a statute's text is Congress's final expression of its intent, if the text answers the question, that is the end of the matter.

The controlling words of 49 USC 14504(c)(2)(B)(iv)(III) are plain and unambiguous and require no judicial construction. The plain meaning of 49 USC 14504(c)(2)(B)(iv)(III) is that it establishes a fee system that will "result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle that such state collected or charged as of November 15, 1991." In this particular case, the fees had been both charged to and collected from Schneider as of November 15, 1991.

The Congressional language in the SSRS establishing and freezing the permitted fee that was "charged or collected as of November 15, 1991" is not ambiguous. It needs no interpretation or embellishment. Congress did not provide that fees collected or charged for the "1991 calendar year" established the cut-off date.

Instead, in 49 USC 14504(c)(2)(B)(iv)(III), Congress chose a precise cut-off date, specifying the exact day, month, and year, i.e., November 15, 1991. If Congress had intended that the cut-off period be synonymous with a calendar year, it would have said so. It did not.

On remand the Michigan Court of Appeals simply held that the decision in *Yellow Transportation (on remand), supra,* 257 Mich App at 610-616, by another panel of the Michigan Court of Appeals panel, was controlling and dispositive of the issues in Respondents' favor. Pet. App. 5a. However, the Michigan Court of Appeals in *Yellow Transportation (on remand), supra,* erred when it imputed the ambiguity this Court found in ISTEA with respect to reciprocity agreements to the otherwise express and unambiguous requirements of 49 USC 14504(c)(2)(B)(iv)(III) as they pertain to the charging and collecting of fees. ISTEA was found to be ambiguous with respect to reciprocity agreements only, and that finding of ambiguity in that limited regard permitted the ICC to engage in a reasonable interpretation of the statute that was afforded deference by this Court under *Chevron*, 467 US at 843. Indeed the Court specifically limited its decision to that issue and expressly noted that it was not deciding the issue pertaining to the charging and collecting of fees. There is no similar ambiguity with regard to the specific requirements of 49 USC 14504(c)(2)(B)(iv)(III), and the Court of Appeals erred in seizing upon this Court's rationale in resolving the reciprocity issue to justify a disregard for the clear and unambiguous requirements of the statute that directed the ICC to:

> "[E]stablish a fee system ... that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." §14504(c)(2)(B)(iv).

There is no ambiguity reflected in this statutory requirement, and this Court should "give effect to the unambiguously expressed intent of Congress" *Chevron, supra*, at 842-843. Michigan charged Schneider the $10 per vehicle fee as of November 15, 1991. Accordingly, Petitioners had complied with the plain and unambiguous language of 49 USC 14504(c)(2)(B)(iv)(III).

The dissenting opinion in *Yellow Transportation (on remand, supra,* in the Michigan Court of Appeals, saw no ambiguity in 49 USC 14504(c)(2)(B)(iv)(III), finding that the plain language of the statute was controlling, noting that there was nothing in the Michigan Supreme Court's opinion or this Court's opinion that changes that result. 257 Mich App 618. The dissent reasoned that, "if the ICC interpretation of ISTEA is contrary to the plain language of the statute and unworthy of deference, then the majority's affirmance of the ICC's interpretation of the unambiguous ISTEA is erroneous." *Id.* Because the phrase "collected or charged as of November 15, 1991" is "obviously clear on its face" the dissent then, 257 Mich App 618-620 reaffirmed and republished its earlier dissent, which stated, in pertinent part:

> I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute, and accordingly would instruct the Court of Claims to apply the statutory language according to its plain meaning and not according to the ICC's strained construction.
>
> The primary goal of statutory interpretation is to ascertain and give effect to its legislative purpose. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry Brokers, Inc v City of Warren*, 210 Mich App 304, 307; 532 NW2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v Thrasher*, 196 Mich App 320,

323; 493 NW2d 457 (1992), aff'd 446 Mich 61; 521 NW2d 214 (1994).

The pertinent language in 49 USC 11506(c)(2)(B)(iv)(III) [49 USC 11504(c)(2)(B)(iv)(III)] provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include November 15, 1991. This distortion of the plain wording of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher, supra*.

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning, and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439, 457; 553 NW2d 7 (1996). Accordingly, I would read "fee . . . that such

State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state(for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected or charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 USC 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

As correctly noted by the dissent, there is no ambiguity in the federal statute. Applying the plain and ordinary meaning of the statute means that Michigan's fees can be set aside only if they were not "charged or collected as of November 15, 1991." The majority opinion issued by the Court of Appeals in *Yellow Freight v Michigan,* 231 Mich App at 199 acknowledged both that the fees were charged to Yellow Freight and were collected from Yellow Freight prior to November 15, 1991. ("Plaintiff sent, and the state received, the fees for 1992 before November 15, 1991"). This acknowledgment was re-affirmed by the Court of Appeals on remand, 257 Mich App at 606. Despite the acknowledgement of these two controlling facts, either one of which is sufficient to satisfy the criteria set forth in 49 USC

14504(c)(2)(B)(iv)(III), the majority opinion in *Yellow* concluded the phrase "charged or collected as of November 15, 1991" is not clear. 231 Mich App at 201, and July 22, 2003 Opinion on remand, 257 Mich App at 613. As noted by the dissent, "The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value." 231 Mich App at 210; 257 Mich App at 619. Indeed, by failing to adhere to the clear and unambiguous language of the statute, the Michigan Court of Appeals has violated a cardinal rule of statutory construction that counsels judicial construction is not permitted where the language of the statute is clear and unambiguous. *Chevron U. S. A., supra*. Aids to interpretation should be used only to resolve ambiguity and not to create it.

## CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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